

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN RE THE MATTER OF ANDREA K. SANDERS; STATE OF MISSOURI,
DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT DIVISION,

Appellant

v.

DELMAR HATCHER, JR..

Respondent

DOCKET NUMBER WD72771

DATE: May 24, 2011

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Gregory Burnett Gillis, Judge

Appellate Judges:

Division One
Gary D. Witt, P.J., James Edward Welsh, and Alok Ahuja, JJ.

Attorneys:

Nicolas Taulbee, Kansas City, MO

Counsel for Appellant,

Attorneys:

Delmar Hatcher, Kansas City, MO

Respondent Acting Pro Se

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

IN RE THE MATTER OF ANDREA K. SANDERS; STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICE, FAMILY SUPPORT DIVISION, APPELLANT, v. DELMAR HATCHER, JR., RESPONDENT.

WD72771

Jackson County

Before Division One Judges: Witt, P.J., Welsh, and Ahuja, JJ.

The State of Missouri, Department of Social Services, Family Support Division (Division) appeals the circuit court's judgment awarding attorney's fees and filing fees to Delmar Hatcher, Jr., in an action involving an administrative child support order issued pursuant to section 454.470, RSMo Cum. Supp. 2010. The Division contends that the circuit court erred in awarding attorney's fees to Hatcher because Hatcher was not a prevailing party and because the Division was substantially justified when it ordered Hatcher to pay child support and provide health insurance for the child. The Division further contends that, even if attorney's fees were appropriate, the circuit court acted in excess of its statutory authority because the court awarded attorney's fees at a rate of \$150 per hour rather than the statutorily prescribed rate of \$75 per hour. Finally, the Division contends that the circuit court erred in awarding Hatcher \$137 for filing fees because no statutory authority exists to justify the award of filing fees in this action.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED IN PART

Division One Holds:

(1) Hatcher did not prevail on the child support issue in his action for judicial review. The circuit court affirmed the agency's decision on the child support issue. Hatcher, however, was the prevailing party on the health insurance issue. The circuit court modified the Division's decision that Hatcher provide health insurance for the child and directed that mother "name and maintain the minor child as a covered dependent on any health benefit plan."

(2) The Division was not substantially justified in persisting in its position of wanting Hatcher to provide medical insurance for the child given that Hatcher testified at the administrative proceeding that he did not have health insurance coverage for the child but mother testified that she did have health insurance coverage for the child.

(3) Because Hatcher prevailed with regard to the health insurance issue only, he is entitled to attorney's fees with regard to that issue only. On remand, the circuit shall determine the portion of attorney's fees attributable to the health insurance issue.

(4) The circuit court erred in awarding Hatcher attorney's fees at the rate of \$150 per hour rather than the statutorily prescribed rate of \$75 per hour. Hatcher did not present competent and substantial evidence to support his claim that any special factors justified a higher fee.

(5) To the extent that the circuit court included the \$137 filing fee in the attorney's fees award, it was error. Filing fees are not included in the definition of "reasonable fees and expenses" provided for in section 536.085(4), RSMo 2000.

Opinion by James Edward Welsh, Judge

May 24, 2011

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.